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OFFICE OF THE CLE

No. 92-776

In the Supreme Court of the United States

October Term, 1992

HENRY SYLVESTER ZIMMER,

Petitioner,

vs.

THE STATE OF MINNESOTA

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MINNESOTA

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Minnesota Supreme Court correctly upheld the exclusion of the Code of Canon Law of the Roman Catholic Church on the grounds that the proffered evidence was irrelevant and unfairly prejudicial.

PARTIES

The petition for writ of certiorari contains a list of the parties *See* Supreme Court Rule 24.2

TABLE OF CONTENTS

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES ..... iv-v

STATEMENT OF THE CASE 1

FACTS 2

ARGUMENTS 4

A. THE CODE OF CANON LAW OF THE ROMAN CATHOLIC CHURCH WAS PROPERLY EXCLUDED ON THE GROUNDS OF UNFAIR PREJUDICE AND IRRELEVANCE. 4

B. MINNESOTA TRESPASS LAW ALONE SHOULD DECIDE THIS MATTER AND SHOULD NOT BE CONSTRUED ACCORDING TO THE CODE OF CANON LAW OF THE ROMAN CATHOLIC CHURCH. 6

C. TRIAL COURT PROPERLY EXCLUDED THE CODE OF CANON LAW OF THE ROMAN CATHOLIC CHURCH AS IRRELEVANT BECAUSE FATHER SOCHACKI WAS A LAWFUL POSSESSOR OF CHURCH PROPERTY ACCORDING TO MINNESOTA LAW. 7

D. ACCORDING TO MINNESOTA TRESPASS LAW, PETITIONER ENTERED CHURCH PROPERTY WITHOUT A CLAIM OF RIGHT. 7

E. UNDER THE "NEUTRAL PRINCIPLES OF LAW" APPROACH FOR RESOLVING CHURCH PROPERTY DISPUTES THE TRIAL COURT PROPERLY EXCLUDED THE CODE OF CANON LAW OF THE ROMAN CATHOLIC CHURCH. ... 10

CONCLUSION 13

TABLE OF AUTHORITIES

Cases

Bishop and Diocese of Colorado v. Mote
716 P.2d 85 (Colo. 1986) 10

Filetto v. St. Mary of Assumption Church
61 Misc.2d 278
305 N.Y.S.2d 403 (Sup. Ct. 1969) 10

Gaetano v. United States
406 A.2d 1291 (D.C. 1979) 9

Jones v. Wolf
443 U.S. 595
99 S.Ct. 3020 (1979) 11

Lindstrom v. Tell
131 Minn. 203
154 N.W.2d 969 (1915) 10

Pallerson v. Bethel Baptist Church
389 N.W.2d 696 (1982) 11

Piletich v. Deretich
328 N.W.2d 696 (1982) 11

Smith v. Pass
382 S.E.2d 781 (N.C.App. 1989) 4

State v. Brechon
352 N.W.2d 745 (Minn. 1984) 9

State v. Flores
418 N.W.2d 150 (Minn. 1981) 4

State v. Hoyt
304 N.W.2d 884 (Minn. 1981) 7, 8, 9

State v. Olson
299 N.W. 2d 89 (Minn 1980)
cert. denied 449 U.S. 1132
101 S.Ct. 954
67 L.Ed.2d 119 4

State v. Olson
178 N.W.2d 230 (Minn. 1970) 11

State v. Quinnell
277 Minn. 63
157 N.W.2d 598 (1967) 7

United States v. Martin
599 F.2d 880 (9th Cir.)
cert. denied 441 U.S. 962
99 S.Ct. 2407
60 L.Ed.2d 1067 (1979) 4

United States v. Pence
410 F.2d 557 (8th Cir. 1969) 6

Minnesota Statutes

Minn. Stat. § 609.605 ..... 6, 8

Minnesota Rules

Minnesota Rule of Evidence 402 6

Minnesota Rule of Evidence 403 6

Other

Black's Law Dictionary *Civil Law* (5th Ed. 1979) 10

The Code of Canon Law: A Test and Commentary 13 (J. Coridon, T. Green and D. Heintschel eds. 1985) 5

STATEMENT OF THE CASE

On January 7, 1991 the State of Minnesota (City of Columbia Heights) initiated a jury trial against the petitioner, Henry Sylvester Zimmer, charging same with two (2) criminal counts of trespassing related to separate incidents occurring on April 4, 1990 and July 4, 1990. The petitioner and his counsel chose to have the separate incidents consolidated into one trial. The trial was conducted before the Honorable Spencer J. Sokolowski, District Court Judge, Tenth Judicial District, Anoka County Courthouse, Anoka, Minnesota.

Just prior to trial, petitioner asked to have marked for evidence a copy of the Articles of Incorporation of the Church of the Immaculate Conception and a copy of the Code of Canon Law of the Roman Catholic Church. The State of Minnesota stipulated to the Articles of Incorporation, but objected to the admissability of the Canon Law on the basis that such evidence was not relevant and would unduly confuse the issues and the jury. The Honorable Spencer J. Sokolowski noted that the same issues were addressed in a pretrial motion and the order dated January 3, 1991 the Honorable Judge Stanley Thorup indicated that the Code of Canon Law of the Roman Catholic Church was not relevant. (Reprinted at page A-1 of the Respondent's Appendix, abbreviated hereinafter as A.___ .) The Honorable Spencer J. Sokolowski then ruled that such evidence would be excluded for trial as well. (Citations to the trial transcript are hereinafter abbreviated T.___ . (T.5-7). The Court of Appeals affirmed (Reprinted at A-1 of Petitioner's Appendix, hereinafter abbreviated Pet. A.___). The issue of whether the trial court erred in refusing to admit the Code of Canon Law of the Roman Catholic Church was appealed and the Minnesota Supreme Court affirmed the lower courts' rulings. (Pet. A.___).

FACTS

In 1981, Father Walter Sochacki was appointed pastor of the Church of the Immaculate Conception. In recent years, petitioner, Henry Sylvester Zimmer, has been involved in many disputes with Father Sochacki and the Church of the Immaculate Conception. On several occasions, petitioner handed out leaflets and pamphlets at services and outside the parish. (T. 50). Petitioner also started carrying a two foot crucifix to mass. (T. 51).

Father Sochacki asked petitioner several times to stop harassing and disturbing parishioners. (T. 39). Father Sochacki consulted the parish council regarding petitioner's behavior. (T. 32). After consultation with parish council, Father Sochacki decided to ban petitioner from the church. On April 3, 1990, after repeated attempts to reconcile the situation with petitioner (T. 39), Father Sochacki handed petitioner the following letter:

> Dear Mr. Zimmer:
>
> During the past two weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to return to the property, you will be arrested.
>
> It is only after long deliberation and consultation with our Parish council that I have come to this conclusion.
>
> Your presence has been a constant intimidation and harassment over the past two year. It is our feeling that this must stop. Please be advised of our intention.
>
> Sincerely,
> The Reverend Walter L. Sochacki
> The Pastor

cc: Columbia Heights Police Department
(A. 8)

After handing the letter to the petitioner, Father Sochacki also orally informed him of the contents of the letter. (T. 30).

On April 4, the day after petitioner received notice that he was no longer welcome on church property, petitioner entered the parish school. (T. 30). Father Sochacki informed petitioner that the petitioner would have to leave the church property. (T. 31). While Father Sochacki called the police, petitioner returned to his car. (T. 31). After speaking with petitioner, the police tagged petitioner for trespass.

On July 4, petitioner returned to the church property to attend mass. (T. 32). Father Sochacki was unable to immediately call the police because he had to conduct mass. (T. 32). At the conclusion of mass, Father Sochacki called the police. (T. 32). When the police arrived, they tagged petitioner for trespass. (T. 32).

After a jury trial, petitioner was convicted on two counts of trespass arising out of the April 4th and July 4th incidents. The Court of Appeals reversed the conviction for the April 4th trespass but affirmed the conviction for the July 4th trespass. On appeal, the petitioner raised numerous issues including, the issue of admissability of the Code of Canon Law of the Roman Catholic Church. The Minnesota Court of Appeals held that the Code of Canon Law of the Roman Catholic Church was irrelevant in this case. (Pet. A.22). The Minnesota Supreme Court affirmed the conviction and the inadmissability of the Code of Canon Law of the Roman Catholic Church, holding, "any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the manner in which the defendant intended to use this evidence." (Pet. A. 27-8)

SUMMARY OF ARGUMENTS

The Respondent, the State of Minnesota, requests denial of review for the simple reason that there is no need for the Supreme Court to hear this case. Review of evidentiary rulings is done on an abuse of discretion standard. There was clearly no abuse of discretion by the trial judge in this matter. The proffered evidence was both unfairly prejudicial and irrelevant. There is no need to examine religious documents when trying a criminal case.

ARGUMENT

A. The Code of Canon Law of the Roman Catholic Church was properly excluded on the grounds of unfair prejudice and irrelevance.

When examining the ruling of a lower court on an evidentiary matter, the scope of review is an abuse of discretion standard. *State v. Olson,* 299 N.W.2d 89, 101 (Minn. 1980) *cert. denied* 449 U.S. 1132, 101 S.Ct. 954, 67 L.Ed.2d 119. *See also, State v. Flores,* 418 N.W.2d 150 (Minn. 1988). A trial court has very broad discretion in applying Rule 403 and, absent abuse, the exercise of its discretion wil not be disturbed on appeal. *United States v. Martin,* 599 F.2d 880, 889 (9th Cir.), *cert. denied,* 441 U.S. 962, 99 S.Ct. 2407, 60 L.Ed.2d 1067 (1979). Respondent contends there was no abuse here.

The courts have consistently held that the trial court has broad discretion in deciding evidentiary matters, particularly what is relevant and what may be unfairly prejudicial. "Whether to exclude evidence under Rule 403 is a determination within the sound discretion of the trial Court and [the] Court will not disturb its ruling absent a showing that such a ruling was so arbitrary that it could not have resulted from a reasoned decision." *Smith v. Pass,* 382 S.E.2d 781, 786 (N.C.App. 1989). The decision of the trial court in this case was not clearly erroneous, nor did the judge abuse his discretion in excluding the Code of Canon Law of the Roman Catholic Church; therefore, the

conviction of the petitioner should be upheld. The Minnesota Supreme Court, in affirming the lower courts' rulings, held, "any potential probative value of the Code was clearly outweighed by the prejudice and confusion which would have ensued from the manner in which the defendant intended to use this evidence." (Pet. A. 27-8).

The petitioner intended to offer into evidence the entire Code of Canon Law of the Roman Catholic Church consisting of 1,752 canons. The petitioner further intended to call the jury's attention to a few select canons. There was no attempt made by the petitioner to introduce this evidence through the use of expert testimony nor to assist the jury in any way in interpreting the meanings of the canons which are "couched in terminology unfamiliar to lay people." (Pet. A. 28). Without expert testimony a jury would be likely, given the size and the nature of the Code, to rely on the petitioner's interpretation of the canons' meaning. The nature of the Code is abstract and as the Minnesota Supreme Court pointed out in its opinion, (Pet. A. 30) the introduction of the edition of the Code that the petitioner sought to introduce, stresses the dangers of an untutored interpretation of the Code. "The canons are marked by certain abstractness . . . even artificiality * * * In the concrete, therefore, it often admits of varying interepretations and applications. An exclusively literal reading can be especially risky in canon law." *The Code of Canon Law: A Text and Commentary* 13 (J. Coriden, T. Green & D. Heinschel eds. 1985). The effect of this type of evidence would be confusing, misleading, and unfairly prejudicial. The jury would be forced to look at only those sections which had been previously indicated and interpreted. It would be impossible for them to interpret the Code fairly by looking at it in its entirety.

It is clear to see that the introduction of the Code in this manner would have confused or misled the jury and been unfairly prejudicial to the State. The trial court did not abuse its discretion by excluding this evidence.

B. Minnesota trespass law alone should decide this matter and should not be construed according to the Code of Canon Law of the Roman Catholic Church.

"Religious principles do not justify any person becoming a law unto himself or to defy enlightened sentiments of mankind, and if religious scruples drive men to civil or criminal disobedience, the State may impose punishment." *United States v. Pence,* 410 F.2d 557, 563 (8th Cir. 1969).

Petitioner was convicted under Minnesota criminal trespass law for trespassing on church property. Minnesota Statute § 609.605, subd. 1(b) (3) states:

> 609.605 **TRESPASS**
>
> **Subdivision 1. Mideameanor**
>
> (b)A person is guilty of a misdeameanor if the person intentionally:
>
> (3)trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

The trial court properly excluded Catholic Church law from the determination of "lawful possession" status and "claim of right" issues since the evidence would confuse the issues, mislead the jury, and lacks relevance in a criminal action. *See,* Minn. R. Evid. 402, 403. The Appellate Court affirmed the exclusion on the ground of irrelevance. (Pet. A. 7-8).

The petitioner states that the Code of Canon Law of the Roman Catholic Church was material to the issues of the case. (Petitioner's Petition p. 18). However, since this was a criminal prosecution against petitioner for violation of the Minnesota trespass statute, an examination of the issues arising out of this statute will show that the evidence was irrelevant.

C. Trial court properly excluded the Code of Canon Law as irrelevant because Father Sochacki was a lawful possessor of church property according to Minnesota law.

In *State v. Quinnell,* 277 Minn. 63, 67-69, 151 N.W.2d 598, 602-603 (1967), this Court held that one making the demand to leave must be, in some sense, the agent of the landowner. Father Sochacki was appointed Pastor of the Church of the Immaculate Conception by the Archbishop of St. Paul and Minneapolis, the Most Reverend John R. Roach, D.D. on January 23, 1981 to manage the church. (T. 5). Father Sochacki is the agent of the landowner i.e., the catholic church. Therefore, under *Quinnell,* Father Sochacki is the lawful possessor who may demand that a trespasser leave.

As acting Pastor, Father Sochacki has the general authorization to take the legal steps necessary for the ordinary administration of the parish, including the power to quell disturbances. The petitioner was determined to be a disturbance to the orderly administration of the church's affairs by the pastor and the Church Council. Accordingly, by virtue of this appointment and by dicatate of the Church Council, Reverend Sochacki clearly possessed the authority to ban appellant from the church premises. Evidence of this authority was presented by the State to the jury, including the call letter Father Sochacki received from Archbishop John R. Roach. (A. 9). The jury determined that Father Sochacki has possessor status under the Minnesota trespass law. The Court of Appeals affirmed this decision. (Pet. A. 19).

D. According to Minnesota trespass law, petitioner entered church property without a claim of right.

The petitioner relies on the "claim of right" defense as established in *State v. Hoyt,* 304 N.W.2d 884 (Minn. 1981). In *Hoyt,* the Minnesota Supreme Court defined the

"claim of right" defense as:

> The claim of right is a defense only if it is bona fide. The reason for allowing a defendant in a criminal trespass case the defense of a bona fide belief of claim of right is that the law generally does not punish persons who commit an offense without criminal intent. A bona fide belief, i.e., a good faith claim of right, negatives the criminal intent required by Minn. Stat. § 609.605(5) (1980).

However, the petitioner's reliance upon the *Hoyt* "claim of right" defense is ill founded because *Hoyt* is clearly distinguishable from the case at hand. In *Hoyt,* Minn. Stat. § 144.651 (1980) and 42 C.F.R. 405.1121(k) gave the guardian of the nursing home resident the right to determine who may associate, or visit, the resident. *Id.* at 888-889. The defendant was deprived of a property right inextricably linked to a personal right, i.e., the right of free association. The defendant was only at that particular nursing home to see a particular resident. In effect, the defendant could not have gone to another nursing home to visit the resident as the resident of the home was "brain dead" and confined to that particular nursing home.

The case at hand deals with the violation of a criminal statute. The petitioner can celebrate mass at any time and at any place. Due to the petitioner's conduct (not religious beliefs) and violation of a criminal statute, the only place that petitioner can not celebrate mass was at the Church of the Immaculate Conception. Unlike *Hoyt*, the site of worship does not eliminate or affect the petitioner's right or ability to celebrate mass. As the petitioner testified at trial:

> Q. You're free to attend any other Roman Catholic Church in this state?
>
> A. Every other Catholic Church in this country.
>
> Q. Are you free to attend any other Roman Catholic Church in this country?

A. Absolutely.

Q. You're free to attend mass in any other church in this state?

A. Absolutely.

(T. 62).

As admitted, the petitioner is free to attend any other church to worship. His status as a member of the Roman Catholic Church was not affected by the actions of Father Walter Sochacki.

Even if the Court finds that the petitioner's reliance on the "claim of right" doctrine is proper, the "claim of right" doctrine is limited under Minnesota law. Under Minnesota trespass law, claim of right refers to an individual's status as an owner, tenant, lessee, licensee or invitee. *Hoyt,* at 889. Here, although the petitioner may have had at one time a claim of right to be on the property as an invitee, that invitation has been revoked by virtue of Father Sochacki's letter to the petitioner dated April 3, 1991. (Pet. A. 23). Protecting other parishioners and preventing repeat offenses are legitimate objectives for revoking a claim of right, as much as they are objectives of sentencing. (Pet. A. 19). The state presented clear evidence to the jury in this case that petitioner had no claim of right under Minnesota law.

Once the State presents evidence that the petitioner has no claim of right, the burden then shifts to the petitioner who may offer evidence of his **reasonable** belief that he has a property right, such as that of an owner, tenant, lessee, licensee or invitee. *Gaetano v. United States,* 406 A.2d 1291, 1294 (D.C. 1979) (emphasis added). The petitioner attempted to satisfy the shifted burden by relying on the "claim of right" defense in *Hoyt.*

However, this "claim of right defense is limited. Subjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right. *State v. Brechon,* 352 N.W.2d 745, 750 (Minn. 1984).

Therefore, the petitioner must provide evidence to satisfy the objective standard of "reasonableness". All of petitioner's arguments were subjective reasons not related to a claimed property right, including petitioner's intended use of the Code of Canon Law of the Roman Catholic Church.

E. Under the "Neutral Principles of Law" approach for resolving church property disputes the trial court properly excluded the Roman Cathlic Code of Canon Law.

The petitioner asserts that Canon Law is relevant to this case and cites several cases in support. However, it is critical to note that all of the case law which petitioner cites in support of his argument pertains to civil causes of action. These cases all involve "[l]aws concerned with civil or private rights and remedies, as contrasted with criminal laws." *See,* Black's Law Dictionary, *Civil Law* (5th Ed. 1979). *See, Lindstrom v. Tell,* 131 Minn. 203, 154 N.W.2d 969 (1915) (civil case involving congregational dispute over expulsion of a pastor); *Filetto v. St. Mary of Assumption Church,* 61 Misc.2d 278, 305 N.Y.S.2d 403 (Sup. Ct. 1969) (civil case to have merger of church parish declared a nullity); *Bishop and Diocese of Colorado v. Mote,* 716 P2d 85 (Colo. 1986) (civil case involving church merger). As a result, petitioner's reliance on these cases and arguments stemming from same are critically flawed, as these cases are clearly distinguishable from the case at hand.

The petitioner is mischaracterizing the actual issue by arguing the relevance and admissability of the Code of Canon Law of the Roman Catholic Church in internal doctrinal disputes, but that is not the case before this Court. The involvement of the Church of the Immaculate Conception and Father Sochacki is in the role of a victim of a crime, not as a party in some civil suit. In such cases criminal law should be applied. "When an individual's behavior is determined to be disruptive by a lawful possessor of the premises upon which the individual's conduct is

exercised, criminal sanctions may be imposed and are not prohibited by the State or Federal Constitution." *State v. Olson,* 178 N.W.2d 230 (Minn. 1970).

Even if the court finds that the petitioner's reliance on these civil cases is appropriate, the court must still uphold the petitioner's conviction, and the inadmissability of the Code of Canon Law of the Roman Catholic Church for two reasons. The State readily agrees with the petitioner and admits that "civil courts may not consitutionally decide ecclesiastical or doctrinal disputes, and the First Amendment requires that civil courts defer adjudications by highest tribunal and hierarchial church organization on issues of religious doctrine or policy." *Pallerson v. Bethel Baptist Church,* 389 N.W.2d 729 (Minn.App. 1986); *see also, Piletich v. Deretich,* 328 N.W.2d 696 (1982) (First Amendment prohibits civil courts from resolving church disputes on the basis of religious doctrine or practice). However, the case at hand is not dealing with "ecclesiastical or doctrinal disputes." Rather, this is a criminal action and was properly tried in a criminal court. The Code of Canon Law of the Roman Catholic Church simply does not govern over criminal cases.

Second, even if the Court decides that this case involves issues other than the essential criminal statutes, the Court should affirm the petitioner's conviction and the inadmissability of the Code of Canon Law of the Roman Catholic Church under the "neutral principles of law" doctrine . This Court, in *Jones v. Wolf,* 443 U.S. 595, 99 S.Ct. 3020 (1979), approved the "neutral principles of law" approach when deciding church property disputes. *Id.* at 603, 99 S.Ct. at 3025. The Minnesota Court of Appeals succinctly noted that this "neutral principles of law" approach had been adopted by Minnesota Courts and relied on deeds, local church charters, and state statutes, thus avoiding the constitutional pitfalls of deciding disputes on the basis of church doctrine. (Pet. A. 8). In a criminal trespass action, there simply is no relevance of religious doctrines such as the Code of

Canon Law of the Roman Catholic Church. The admission of same would force a jury into an examination of Roman Catholic religious beliefs with virtually no enlightenment on the issues of criminal trespass law. The trial court properly avoided this constitutional pitfall by excluding the Code of Canon Law of the Roman Catholic Church at trial. Both the Minnesota Court of Appeals and the Minnesota Supreme Court affirmed this decision.

CONCLUSION

The appellate courts in this case have adhered to this Court's method of analysis in concluding that the Code of Canon Law of the Roman Catholic Church be excluded as evidence in this case. The narrow issue and holdings of the prior courts on an evidentiary ruling which follows well-established legal principles hardly constitutes an important federal question. Further review by this Court is not necessary.

For all the reasons stated above, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

Kalina, Wills, Woods, Gisvold & Clark

Dated:
December 2, 1992

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APPENDIX

Hon. Judge Stanley Thorup's Pre-trial Order and Memo A-1

Letter from Father Walter Sochacki to Henry Zimmer A-7

Father Sochacki's Call Letter to the Church of the Immaculate Conception A-8

COUNTY OF ANOKA TENTH JUDICIAL DISTRICT

State of Minnesota
Plaintiff,

vs.

ORDER

Henry Sylvester Zimmer,
Defendant.

Court File No. K3-90-7232
K5-90-7293

The above-entitled matter came on for hearing before the undersigned Judge of District Court on November 19, 1990 pursuant to Defendant's motion to dismiss two charges of trespassing based on a constitutional challenge to Minn. Stat. 609.05 subd. 1(b) (3) (1990) and lack of probable cause to make the arrest.

Paul Thompson, Esq., Asst. City Attorney, 4111 Central Ave., Suite 102S, Columbia Heights, MN 55421, appeared on behalf of the Plaintiff;

John E. Mack, Esq., R & J Bldg., Box 302, New London, MN 56273, appeared with and on behalf of Defendant.

The court having heard all the arguments now makes the following:

ORDER

1. Defendant's motion to dismiss the complaint based on the constitutionality of Minn. Stat. 609.605 subd. 1(b)(3) is denied.

2. Defendant's motion to dismiss the complaint for lack of probable cause is denied.

3. Defendant's motion for consolidation of cases K3-90-7232 and K5-90-9273 is granted.

4. The attached memorandum is made part of this order.

BY THE COURT:

Dated: January 3, 1991

Stanley N. Thorup
Judge of District Court
Tenth Judicial District

MEMORANDUM

FACTS

Henry Zimmer (herein after referred to as defendant) was a member of Immaculate Conception Catholic Parish in Columbia Heights, Minnesota at all times relevant to this proceeding. On April 3, 1990, Reverend Walter L. Sohacki, Pastor of the aforementioned Parish, delivered to the defendant the following letter:

> Dear Mr. Zimmer:
>
> During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily masses. You have been a constant source of fear to many of our parishioners.
>
> With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to

return to the property, you will be arrested.

It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over the past two years. It is our feeling that this must stop. Please be advised of our intention.

On April 4, 1990, after receipt of the letter, defendant returned to the lobby area of Immaculate Conception Church. Police were notified and Officer Bartlett of the Columbia Heights Police Department responded to the call. Upon arriving at the Church, Officer Bartlett spoke with Rev. Sohacki who pointed out defendant seated in an automobile across from the church.

On July 4, 1990, defendant once more returned to the church to attend mass. The police were again notified, but before the arrival of the officer, defendant left the premises.

Defendant was charged by formal complaint with two separate counts of trespass in violation of Minn. Stat. 609.605 subd 1(5) (NOW Minn. Stat. 609.605 subd. 1(b) (3) (1990)) on May 25, 1990 and August 22, respectively.

The defendant now moves to dismiss the charges based first on the unconstitutionality of Minn. Stat. 609.605 subd. 1(b) (3): more specifically, that the use of civil law to enforce a doctrinal dispute is an unconstitutional entanglement of State authority with church affairs; and secondly, that expulsion by a priest or minister does not satisfy the statutory element of "Lawful Possessor" and accordingly the State has failed to establish probable cause for the arrests.

ANALYSIS

The first argument to be addressed by this court is the constitutionality of Minn. Stat. 609.605 subd. 1(b) (3) when the complainant is a religious entity.

"When an individual's behavior is determined to be

disruptive by a lawful possessor of the premises upon which the individuals conduct is exercised, criminal sanctions may be imposed and are not prohibited by the State of Federal Constitution." *State v. Olson,* 178 N.W.2d 230 (Minn. 1970).

In the case before the bar, the defendant mischaracterizes the actual issue to be decided by arguing that the court must interpret the Canon Law of the Catholic Church in order to determine if probable cause existed for the arrest. While this court does not have jurisdiction to decide internal religious doctrinal disputes, it does have jurisdiction to decide criminal matters. Here, the only involvement of the church is the role of the victim in a criminal matter, a situation in which this court clearly has jurisdiction.

The only issue before this court is whether the state has met their burden of making a prima facie case as to each element of Minn. Stat. 609.605 subd. 1(b) (3) (1990).

The statute under which defendant has been charged, reads as follows:

> 609.605. Trespass
>
> Subdivision 1. Misdemeanor.
>
> (b) A person is guilty of a misdemeanor if the person intentionally:
>
> (3) trespasses on the premises of another and, without claim of right, refuses to depart from the premises on demand of the lawful possessor.

Minn. Stat. 609.605 subd. (1) (b) (3) as amended 1990.

In order to meet their burden, the state must prove that (1) defendant intentionally entered the property of another (2) without claim of right and (3) refused to depart upon demand of a lawful possessor.

There is no dispute that defendant intentionally entered onto the property of Immaculate Conception Church located in Columbia Heights, Anoka County, Minnesota.

The primary issue that defendant rasies is whether

Reverend Sohacki was a "lawful possessor" of the property for purposes of demanding defendant's departure from church premises. While the Reverend is not the sole owner of the property, he is the equivalent of a caretaker or store manager. Reverend Sohacki was appointed Pastor of Immaculate Conception in 1981. Encompassed within the power of the appointment is the authority to attend to the ordinary administration of the parish: Defendant was determined by the Pastor and Church Council to be a distrubance to the orderly administration of the church's affairs. Accordingly, by virtue of his appointment and by dictate of the church council, Reverend Sohacki clearly possessed the authority to ban defendant from the church premises.

The final issue for the court to determine is whether defendant entered the property without a claim of right. In Minnesota trespass law, claim of right refers to an individuals status as an owner, tenant, lessee or licensee. See: *State v. Hoyt,* 304 NW.2d 884 (Minn. 1981). Here, although defendant may have had a claim of right to be on the property as an invitee, that invitation had been revoked by virtue of Reverend Sohacki's letter to the defendant.

Once the state presents evidence that defendant has no claim of right,the burden then shifts to the defendant who may offer evidence of his reasonable belief that he has a property right, such as that of an owner, lessee, licensee or invitee. See: *Gaetano V. United States,* 406 A.2d 1291, 1294 (D.C. 1979). Subjective reasons not related to a claimed property right or permission are irrelevant and immaterial to the issue of claim of right. *State v. Brechon,* 352 N.W.2d 745, 750 (Minn. 1984).

Defendant has been precluded from attending mass at Immaculate Conception parish only. He is not prohibited from attending mass at any other parish of his choice. Accordingly, defendant's argument that he was denied his right to attend mass is immaterial to this analysis.

The court finds that the State has shown probable

cause to proceed with the charges of trespass as listed in the complaint.

S.N.T.

CHURCH of the IMMACULATE CONCEPTION
4030 Jackson St. N.E.
Columbia Heights, Minesota 55421

April 3, 1990

Mr. Henry Zimmer
4021 California Street N.E.
Minneapolis, MN 55421

Dear Mr. Zimmer:

During the past weeks your presence and your actions have intimidated and harassed many members of our parish both during weekend liturgies and at daily mass. You have been a constant source of fear to many of our parishioners.

With this letter I would like to take the opportunity to inform you that you are no longer allowed on our property (City Ordinance 609.605). If you chose to return to the property, you will be arrested.

It is only after long deliberation and consultation with our Parish Council that I have come to this conclusion. Your presence has been a constant intimidation and harassment over the past two years. It is our feeling that this must stop. Please be advised of our intention.

Sincerely,

The Reverend Walter L. Sochacki
The Pastor

cc: Columbia Heights Police Department

January 23, 1981

Reverend Walter L. Sochacki
Church of Saint Mary of the Lake
Lane North
Plymouth, Minnesota 55441

Dear Father Sochacki,

With this letter I am pleased to transfer you from the Co-pastorate of the Church of Saint Mary of the Lake, Plymouth, and appoint you Pastor of the Church of the Immaculate Conception, Columbia Heights, effective February 26, 1981.

In accordance with Canon 1406 § of the Code of Canon Law, you understand that you are required to make your Profession of Faith before fulfilling any of your duties as Pastor. Any priest of the Archdiocese may witness it as my delegate. This document should be returned to the Personnel Office at the Chancery before you take up your new responsibilities.

Further, I dispense you from all other formalities such as may be required under Canon 1444 for taking canonical possession of your parish.

This appointment will be published in The Catholic Bulletin of February 20, 1981.

In particular, Walt, I want to thank you for the excellent work that you have done these past years. You and Father Kegler have done an excellent job at the Church of Saint Mary in Plymouth. In expressing my appreciation I am sure that I speak also for the people who you have served.

Finally, and most importantly, I pray that Almighty God will bless you richly and with a deep sense of satisfaction

and joy as you begin to minister at Immaculate Conception.

Sincerely yours in Christ,

Most Reverend John R. Roach, D.D.
Archbishop of Saint Paul and Minneapolis

Encl.

cc: Fr. Kegler, office, Fr. Wajda